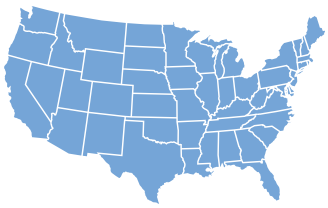
HRhero.com
EMPLOYERS STATE LAW ALERT
Summarizing Significant New Employment Laws & Regs in All 50 States



Vol. 14, No. 2 • February 2019

Immigration

Immigrant employment eligibility not just a federal issue; many states also weigh in with laws

by Tammy Binford

U.S. employers struggling to fill positions understandably focus on finding applicants with the right skills, education, experience, and attitude. But they can't overlook another potentially risky issue—making sure new hires are legally authorized to work in the United States.

Determining an applicant's immigration status requires at least two considerations. On the one hand, employers must make sure applicants have the documentation to prove they are legally authorized to work in the United States. And on the other hand, they must make sure they don't fall into unlawful discrimination based on race or ethnicity if they turn an applicant down.

On the federal level, the Immigration Reform and Control Act (IRCA) regulates the employment of foreign workers and details how employers can verify the legality of new hires. The law also prohibits discrimination against jobseekers and employees based on national origin or citizenship. Under the IRCA, it is illegal for employers to knowingly hire or employ foreign workers not authorized to work in the United States, and it requires employers to use I-9 forms to verify workers' legal status.

In addition to completing I-9 forms on all new hires, employers can verify work authorization by using the federal E-Verify system. Submitting information about an employee to the system will check to see if the person's name, Social Security number, and birth date match public records. The system notifies the employer if something doesn't match, and then the employer must give the notification to the employee. The law allows eight days for contested no-match letters to be appealed to the appropriate government entity.

Many states have their own work authorization requirements that go beyond federal law. Here's a look at a few examples of state laws dealing with employment verification.

Alabama. Among the strictest laws in the nation, the controversial Beason-Hammon Alabama Taxpayer and Citizen Protection Act was signed into law on June 9, 2011, but the state legislature has amended some of its provisions, and some original parts have been struck down by the courts. As it relates to employment, the law makes it illegal for undocumented aliens to be employed, apply for work, or perform work as independent contractors in Alabama. The law also requires all employers with operations in Alabama to use the federal E-Verify system.

Arizona. Arizona's law also takes a tough stand against employers that knowingly hire undocumented workers. The Legal Arizona Workers Act includes a possible 10-day business license suspension for the first offense and a three-year probationary period in which the employer must file quarterly reports with the county attorney for each new employee hired at

(continued on page 2)

In This Issue

Employers State Law Alert is published monthly for $499 per year by M. Lee Smith Publishers®, a Simplify Compliance brand, 100 Winners Circle, Suite 300, P. O. Box 5094, Brentwood, TN 37024-5094, 800-727-5257 or service@blr.com.

Alan King, Editor • Brad Forrister, VP Content • With contributions from members of the Employers Counsel Network

the location where an unauthorized worker was employed. If found guilty of a second violation within a three-year period after the first violation, the business will have its business license permanently revoked. The penalties are even greater for "intentional" violations, including a five-year probationary period and a minimum 10-day business license suspension for the first offense. The law also requires employers to use the E-Verify system. Arizona's law covers employers that transact business within the state for which a business license has been issued and that employ one or more workers to perform services within the state.

California. California laws go in a different direction than states with strict laws aimed at undocumented workers and the employers that might hire them. A state law that took effect January 1, 2018, requires federal immigration enforcement agents to provide a warrant to an employer before receiving access to nonpublic work areas. Also, employers may not allow an agent access to employee records without a subpoena or court order. (That prohibition doesn't apply to Form I-9 or other documents for which a Notice of Inspection was provided to the employer.) Despite passage of the law, a ruling in *United States v. California* barred enforcement of the law with respect to private employers.

Another California law requires employers to provide notice to current employees of any inspection of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration agency within 72 hours of receiving notice of the inspection.

Another state law makes it unlawful for an employer to engage in any "unfair immigration-related practice" against an employee for exercising a right under the state Labor Code or local ordinance. *United States v. California* barred enforcement of part of this law with respect to private employers. California law also assesses penalties for improper use of the E-Verify system.

Georgia. State law requires public employers and their subcontractors to register and participate in the federal work authorization program (currently E-Verify), and all private employers with more than 10 employees must be enrolled in and using E-Verify for new hires or rehires.

Illinois. Like California, Illinois law takes aim at possible civil rights violations related to how employers verify employment eligibility. The Illinois Human Rights Act prohibits employers from requesting more or different documents than are required or to refuse to honor documents that on their face reasonably appear to be genuine. State law also requires employers using E-Verify to meet certain requirements, such as displaying notices that E-Verify is being used. If employers receive a no-match notice, they must notify the individual of the right to contest it. Employers may not terminate or take adverse action against an employee until they receive a final nonconfirmation notice. The law covers all employers.

Indiana. State law allows any employer that knowingly employs an unauthorized alien to be sued to obtain reimbursement of amounts paid by the state as unemployment insurance benefits. State law also requires state agencies and political subdivisions as well as government contractors to use E-Verify.

Nebraska. Public and private employers that receive tax incentives or state or local government contracts are required to use E-Verify.

Washington. State law requires international labor recruitment agencies and Washington employers to provide disclosures about workplace rights to most foreign workers referred to or hired by a Washington employer. The required disclosures include notification that the worker may be entitled to certain rights and protections under state and federal law. Employers aren't required to provide disclosures to foreign workers who hold certain visas and have been provided with an antitrafficking informational pamphlet developed by the federal government.

Statutes

Georgia

Analysis

Legislation

Common Day of Rest Act, Title VII: what Georgia employers should know

by Destiny Smith Washington

During employment compliance audits in Georgia, the state's little-known Common Day of Rest Act often emerges. The statute is buried under the Georgia Code's "Commerce and Trade Title." It requires most businesses operating on the two traditional "days of rest" (Saturday and Sunday) to provide religious, social, and physical "reasonable accommodations" to employees who work and whose habitual day of worship falls on those days. Read on to learn more about the mandate.

What 1974 state law says

The Act was passed in 1974 to promote the "health, recreation, welfare, repose, and religious liberty" of the state's citizens. Its purpose is to balance the interests of providing the public with necessary benefits and services while protecting employees' humanitarian, social, and religious rights.

The rest days are measured from (1) midnight Friday to midnight Saturday and (2) midnight Saturday to midnight Sunday. Certain activities are exempt, including casual transactions, agricultural operations, charitable and religious activities, and the practice of healing arts. Further, governmental employers and employees are exempt.

To find the Act in the Georgia Code, go to the chapter titled "Selling and Other Trade Practices" in the commerce and trade section. There it appears alongside regulations for "Gasoline Marketing Practices," "Consignment of Art," "Trade Secrets," the "Georgia Lemon Law," "Beauty Pageants," and "Identity Theft." Unlike with those other statutes, however, the common day of rest law carries no penalty.

Legislative history and intent

The Act was initially passed to "limit the doing of business" on the two consecutive days of Saturday and Sunday

so employees could enjoy them as days of rest. In the beginning, the law made it a misdemeanor to *sell or compel employees to sell* merchandise on the two consecutive days of Saturday and Sunday, and fines could be imposed. In addition to the exemptions mentioned above, several other types of businesses—including restaurants, hotels, hospitals, pharmacies, and other service providers, even if they sold merchandise—were exempt from the Act.

A year later, however, the Georgia Supreme Court struck down most of the Act as unconstitutional but retained the portion requiring employers operating on Saturday or Sunday to provide reasonable accommodations for employees whose days of worship fell on those days. In the case, Gaylord's, a department store, sued local law enforcement and prosecutors, alleging the Act was unconstitutional. The court held that although the Act's caption stated it was attempting to limit the "doing of business" on Saturday and Sunday, in reality, it prohibited only *sales* by *certain businesses* on those days. *Rutledge v. Gaylord's*.

Title VII steals state law's thunder

Although thankful for the history lesson, you may be wondering at this point why the state law sounds so similar to another law you've heard of. That's because the state law was passed *after* the 1972 amendment to Title VII requiring employers to provide reasonable religious accommodations to employees. Under the federal law, religious accommodations are required unless doing so would cause an undue hardship for your business.

Title VII's religious accommodation requirements appear to be broader than the state law. The federal law:

- Covers more employers, regardless of industry, provided the requisite number of employees (15) is met;
- Applies to governmental entities, agricultural employers, and some charitable organizations; and
- Requires a religious accommodation (except in the case of hardship) for employees whose days of worship may not fall on Saturday or Sunday.

Further, when you're determining whether a religious accommodation should be granted to an employee, the inquiry centers more on whether the religious belief is "sincerely held" and how the accommodation would affect your business operations instead of whether an employee's day of worship falls on a particular day.

Bottom line

The Georgia statute remains the law in the state even though it contains no penalties, most of its substance was severed in the supreme court decision the year after its enactment, and Title VII's provisions are broader. Follow the state law's mandate since a violation likely also would mean you're in trouble with Title VII.

Excerpted from *Georgia Employment Law Letter*
Edited by Glianny Fagundo, Raanon Gal of Taylor English Duma LLP
Destiny Washington of FordHarrison LLP
Christopher P. Butler

Illinois

Wages

Prevailing Wage law

This law requires the local prevailing wage to be set at the rate that prevails for similar work performed under collective bargaining agreements in a locality.

Cite: 2019 IL SB203, IL Pub. Ch. 100-1177 (26 pages)

Enacted: 1/15/2019

Effective: 6/1/2019

www.ilga.gov/legislation/publicacts/fulltext.asp?Name=100-1177

Maine

ANALYSIS

Legislation

Maine employment law: what's new and what's ahead

by Aiden French

Some important changes to Maine employment law have recently gone into effect. Meanwhile, the legislature is currently debating several key bills that, if passed, could have significant ramifications on Maine businesses. Read on to get caught up on the latest happenings in Augusta.

What's new for employers as of January 1, 2019

Two significant changes in the laws affecting Maine employers recently went into effect: (1) an update to the procedure regarding background checks for school employees and (2) an increase in the state minimum wage. The background check law mandates that school districts and private schools share a list of all school employees with the Maine Department of Education every quarter, beginning January 1. The department will then confirm that each employee has met background check and fingerprinting requirements, notifying the school district about any noncompliant employees.

While the school background check law will affect thousands of employees in Maine, the other new law will affect hundreds of thousands. Thanks to a law approved by voters in 2016, the minimum wage has been increasing every year. The latest increase brings it to $11 an hour, up from $10 in 2018. The so-called "tip credit" that applies to workers who receive a significant portion of their wages through tips will also be affected. Tipped employees must now receive a minimum wage of $5.50 per hour, up from $5. The minimum wage will increase again in January 2020 to $12 an hour, after which any increases will be tied to a rise in the cost of living.

What's coming down the pike

The Maine Legislature will decide several bills directly affecting employers in the state in the coming months. Most significantly, the chamber will decide on provisions implementing paid family leave, prohibiting employers from asking prospective employees about salary history or

requesting Social Security numbers (SSNs), and reducing the burdens for individuals with criminal histories to find work. While legislators are still discussing each of the bills in committee, employers would be wise to monitor their passage.

House Speaker Sara Gideon has proposed a bill providing Maine employees with paid medical leave, effective in 2020 at the earliest. That would expand on federal law, which requires that most employers give employees unpaid family leave for up to 12 weeks. The bill would provide full-time, self-employed, and part-time workers up to 12 weeks of *paid* leave for childbirth and 20 weeks for a serious medical condition. A 0.5 percent tax on employee wages would help fund the bill, with the wages collected by the Maine Department of Labor and plugged into a statewide insurance pool. The program would pay workers up to 90 percent of their pay, depending on income levels, with a cap on payments of $800 a week. A similar bill, Legislative Document (LD) 69, would create the same structure but apply only to businesses with more than 15 employees and pay 66 percent of a worker's wages for eight weeks.

A pair of bills would affect an employer's ability to inquire about salary history before making a job offer. The first, LD 122, would prohibit employers from inquiring about prospective employees' salary history until after negotiating and offering a job. The second, LD 278, would amend the Maine Human Rights Act (MHRA) to provide that seeking information about a prospective employee's wage history before offering employment would be evidence of compensation discrimination. It also would prohibit an employer from preventing the discussion or disclosure of employees' wages, making it a violation of the MHRA as well.

A related bill, LD 305, would seek to protect against identity theft during hiring by prohibiting an employer from requesting a prospective employee's SSN during the application process—except for purposes of a substance abuse test or preemployment background check.

The Maine Legislature also has been considering LD 1202, "An Act to Clear a Path to Employment," which would establish an automatic process for individuals who have been convicted of a Class C, D, or E crime to have their records sealed. Specifically, an individual could have his criminal records sealed if the crime didn't involve domestic violence or sexual assault, he hasn't been convicted of any other crime in Maine or elsewhere, and at least seven years have passed since the conviction. The bill would lower the seven-year threshold if he demonstrated that he obtained a high-school diploma or higher degree after conviction. It would authorize individuals whose convictions have been sealed to act, for hiring purposes, as if their criminal records never occurred.

Takeaway

With several key employment-related bills currently up for debate in Augusta, it would be a good time to contact your business's local representative or trade association to make your voices heard. Would a paid family leave bill help attract workers to Maine? Or would the corresponding tax on wages drive businesses away? We will continue to monitor the latest developments on the bills and keep you updated.

Excerpted from *Maine Employment Law Letter*
Peter D. Lowe, Daniel C. Stockford, Connor J.K. Beatty, Editors
Brann & Isaacson

Massachusetts

Employee Privacy

Security breach notification

This law amends current law related to security breaches and the protection of consumer financial and credit information. The law amends employers' data breach notification requirements. Specifically, employers are now required to include all the following information in their breach notifications: the right to obtain a police report, how to request a security freeze and the necessary information needed for it, and notice that the security freeze will be free and the mitigating services that will be provided.

Employers also must provide the following information when reporting a breach to the Massachusetts Office of the Attorney General and/or the Massachusetts Office of Consumer Affairs and Business Regulation: the nature of the security breach or unauthorized acquisition; the number of affected residents at the time of the notification; the name and address of the employer that experienced the breach; the person responsible for the breach of security, if known; the type of personal information that was compromised (for example, Social Security number, driver's license number, financial account number, credit or debit card information, or other data); whether the employer maintains a written information security program; and any steps taken or planned to be taken relating to the incident, including updating the written information security program.

If the data breach includes Social Security numbers, the employer must contract with a third party to offer each resident whose number was disclosed (or was reasonably believed to have been disclosed) with free credit monitoring services for no less than 18 months. Additionally, an employer cannot require anyone affected by the breach to waive her right to a private claim as a condition to its offer of credit monitoring services.

Cite: 2019 MA HB4806, MA Pub.Ch. 444 (11 pages)

Enacted: 1/10/2019

Effective: 4/10/2019

https://malegislature.gov/Bills/190/H4806

Labor Unions

Benefits for locked-out employees

This law increases unemployment compensation benefits for locked-out employees. Under the law, the total unemployment benefits an eligible individual may receive because of an employer's lockout must be extended to an additional 26 times her benefit rate or until the lockout ends, whichever is shorter.

Cite: 2018 MA HB4988, MA Pub. Ch. 338 (1 page)

Enacted: 12/31/2018

Effective: 12/31/2018

https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter338

Montana

Analysis

Legislation

A look at labor and employment bills proposed by Montana lawmakers

by Jason S. Ritchie

In just the first 20 days of the 66th regular session of the Montana Legislature, lawmakers have discussed some significant labor and employment bills. Here's an overview of the proposals we think will be of the most interest to our readers.

Montana Family and Medical Leave Insurance Act

House Bill (HB) 208 would require employers and employees to contribute to a fund—similar to the way unemployment insurance is funded—that would provide benefits to employees who are on leave under the federal Family and Medical Leave Act (FMLA). Contributions would be calculated annually depending on the amount of money needed to fund the benefits. Employees would apply to the Montana Department of Labor and Industry (DOLI) for benefits to compensate them for their base wages or earnings while they're on FMLA leave. The law would use the FMLA's eligibility and medical certification requirements for employees seeking leave.

Analysis: We have a couple of practical concerns about this bill. First, the cost to employers and employees is unknown. Although the bill provides for a cap contribution of one percent of employees' monthly wages, there really is no guide to the actual cost of this type of insurance.

Second, HB 208 uses the definition of "employer" found in Montana's unemployment statutes, meaning the FMLA insurance law would apply to every employer with an annual payroll of $1,000 or more. That's significantly different from the FMLA's definition of "employer," which applies only to organizations with more than 50 employees. The practical effect of that broad definition is quite concerning. For example, employers that aren't subject to the FMLA may be required to contribute to the fund.

Moreover, HB 208 effectively expands FMLA leave to all employers with an annual payroll of $1,000 or more because it requires an employer contributing to the fund to (1) continue health insurance benefits for an employee taking leave and receiving benefits under the new law and (2) reinstate an employee who takes leave and receives benefits to the same or an equivalent position upon his return. Those obligations place significant burdens on small Montana businesses that haven't been and wouldn't otherwise be covered by the FMLA.

Accommodations to mandated vaccinations

Senate Bill (SB) 23 would mandate that if an employer requires employees to be vaccinated and offers alternative accommodations to certain employees for medical, religious, or other reasons, the employer must make the same alternative accommodations available to any employee who asks to be exempt from the vaccination.

Analysis: Not to oversimplify things, but if employers are required to offer all employees alternatives to mandatory vaccinations, the practical effect of this bill is to abolish employermandated vaccinations.

State income taxes on student loan repayments

HB 216 would amend state income tax laws to exclude from ordinary income any compensation employers pay employees for student loan repayments. The amount excluded from ordinary income would be capped at $5,000. To be eligible for the exclusion from ordinary income, an employee would have to be employed by the employer on a full-time basis for at least six months and provide the employer with documentation of student loan payments made in the current tax year.

Analysis: Given the difficult market for quality employees in Montana, this bill could be a valuable recruiting, hiring, and retention tool for employers.

Public employees' union membership, dues

This draft legislation, **LC 1577**, is in direct response to *Janus v. AFSCME, Council 31*, in which the U.S. Supreme Court held last summer that forcing nonunion public employees to pay agency fees violates the First Amendment's protections for freedom of association and freedom of speech. (For an overview of the *Janus* decision, see "'Fair-share' fee ruling brings new day for public employers, employees" on pg. 3 of our August 2018 issue.)

The draft bill specifically provides that public employees may not be required to become or remain members of a labor organization to obtain or retain public employment. More specifically, a labor organization cannot collect any dues, fees, assessments, or other charges from a nonmember public employee. The bill also allows current union members of public employers to disassociate with labor organizations and requires that nonmember public employees affirmatively consent to any withholding of dues, fees, assessments, or other charges.

Analysis: Some form of legislation is needed to address the *Janus* decision and its practical impact on Montana law, which is significant. Montana law requires all public employees subject to a collective bargaining agreement (CBA) to either join the union or support the union financially, a requirement that is now unconstitutional under *Janus*. If a Montana public employer doesn't honor its CBA (and the current state law), it is technically in breach of the agreement. Conversely, the U.S. Supreme Court has held that complying with the CBA and Montana law is unconstitutional. Legislation is clearly needed to clean up this issue.

Use of convictions, criminal history in hiring

This draft legislation, **LC 1988,** prohibits employers from asking job applicants about their criminal history. The legislation provides very limited exceptions when (1) federal, state, or local law requires the employer to ask about criminal history, (2) the employer is hiring for a law enforcement or criminal justice position, or (3) the position is for a nonemployee volunteer. The statute carries a penalty

of $500 for the first violation and $1,000 for every subsequent violation.

Analysis: This legislation is in line with the popular "ban-the-box" movement aimed at eliminating criminal history as a disqualifier for employment. Proponents of banning the box often cite data showing that people of color are disproportionately arrested, convicted, and incarcerated, so employers' inquiries about criminal history have a discriminatory impact on people of color. Opponents of the movement often cite employers' obligation to keep employees safe as a legitimate business reason to ask for criminal history. That debate raises a good opportunity to talk about a best practice for assessing job applicants' criminal history.

Under current Montana law, employers can ask about convictions, but not arrests. A criminal conviction shouldn't be the end of the analysis, however. Instead, you should consider whether a conviction disqualifies someone based on the following factors:

- The nature and gravity of the offense or conduct;
- The time that has passed since the offense or conduct occurred; and
- The nature of the job held by the employee or sought by the applicant (in comparison to the conviction).

By undertaking such an analysis, you educate yourself about an employee's or applicant's criminal history and you can make a nondiscriminatory decision based on how it relates to the job.

Increase in minimum wage for nonagricultural employees

This draft legislation, **LC 0387,** increases Montana's minimum wage from $8.50 per hour to $12 per hour immediately and to $15 per hour on July 1, 2020, with annual adjustments based on the Consumer Price Index (CPI). The draft legislation also deletes the current exception for businesses with annual gross sales of less than $110,000, making the minimum wage applicable to all Montana employers.

Analysis: Current law requires the DOLI to adjust the minimum wage in accordance with changes in the CPI. The state minimum wage increased to $8.50 on January 1, 2019. While this proposal doesn't change the method for annually reviewing the minimum wage, it will have a significant impact on Montana employers by enacting a significant jump in the minimum hourly wage to $12 and then to $15. By comparison, the federal minimum wage is currently $7.25 an hour.

Excerpted from Montana Employment Law Letter
Jason S. Ritchie, Michael Manning, Editors
Ritchie Manning LLP

Wyoming

Analysis

Legislation

And the games continue: legislative update, part 2

by Brad Cave

The Wyoming Legislature is in the midst of its 2019 general session, and legislators are considering a variety of employment-related bills. Some are worthwhile; others not so much. Let's take a closer look.

Bills under consideration

Wage transparency. As we covered in recent editions, **House Bill (HB) 72** threatened to outlaw any employer rule restricting employees from discussing their compensation with other employees and to create a new legal claim for retaliation against any employee who discussed pay with others. This bill was a bad idea, and fortunately, it was defeated by a vote of 27 in favor and 32 opposed on its first vote on the house floor.

Equal pay penalties. Wyoming's equal pay law has historically carried criminal penalties of a maximum $200 fine and up to six months in jail for violations, with each day of a violation constituting a separate offense. **HB 71** increases the fine to $500 but eliminates the statement that each day of the violation is a separate offense. This bill has passed the house with strong support and is waiting for action in the senate.

Pregnant workers. HB 200 proposes to amend the Wyoming Fair Employment Practices Act (FEPA) to prohibit an employer from refusing to make reasonable accommodations requested by a job applicant or employee for any condition related to medical needs arising from pregnancy, childbirth, or related conditions, unless it can demonstrate an undue hardship. The proposal would prohibit:

- Denying employment opportunities based on the need for a reasonable accommodation;
- Requiring an employee to take leave if any other reasonable accommodation can be provided;
- Requiring her to accept an accommodation she rejects;
- Counting absences relating to pregnancy, childbirth, or related conditions under no-fault attendance policies; and
- Failing to reinstate the employee to her original job or equivalent position when her need for an accommodation ceases.

The bill defines "reasonable accommodation" to include frequent or longer breaks, time off for recovery, acquisition or modification of equipment or seating, assistance with manual labor, modified work schedules, transfer of the employee to a less strenuous position, job restructuring, light duty, break time, and a private location other than a bathroom to express milk. Finally, the bill defines undue hardship as an action presenting "significant difficulty or expense" considering the nature and cost of the accommodation, the employer's overall financial resources, the size of the business by employee numbers and facilities, and the impact on the employer.

We all love motherhood! But this proposal simply duplicates much of the protections already available under the federal Pregnancy Discrimination Act (PDA). The PDA applies to employers with 15 or more employees during 20 weeks of the current or preceding calendar year. The state protections would apply to employers with as few as two employees if added to the Wyoming FEPA. While pregnancy discrimination is no less wrong when perpetrated by

small employers, they are less likely to have the resources necessary to prove through litigation that the allegedly reasonable accommodations the employee demanded would have caused an undue hardship.

HB 200 has been assigned to the House Corporations Committee, which has not taken action on the bill.

Salary history ban. HB 178 would amend the Wyoming FEPA to prohibit an employer from asking for the compensation and benefits history of a candidate and relying on that history as a factor in determining whether to make a job offer or how much to offer. The bill would permit employers to use any salary history volunteered by a candidate to decide whether to offer employment or set the salary offer. The restriction on obtaining salary information won't apply to information about the candidate's salary or benefits while employed by a public-sector employer, which is available under the Wyoming Public Records Act.

We understand this provision is intended to stop the perpetuation of lower salaries for women and minority employees based on what they earned in past jobs. This proposal is based on the presumption, however, that a candidate's salary history may have been depressed due to discrimination by their former employers, rather than a function of other market influences. Also, nothing about salary history permits or provides an excuse for employers to pay lower salaries to women or minority candidates when compared to men or nonminority employees who are doing the same work. That form of discrimination is already prohibited by federal and state law.

The House Corporations Committee was assigned to consider this bill but has not taken action at this time.

Wage offsets for employee theft and property damage. Wyoming's wage offset rules currently restrict the circumstances when employers can deduct from the employee's final paycheck the value of property he doesn't return or has damaged through negligence. **Senate File (SF) 101** would permit employers to withhold sums resulting from employee theft or damage if acknowledged by the employee or determined by a judicial proceeding. The employer can withhold the wages for up to three months from the date the wages are due if it intends to file a lawsuit for theft or damage and can continue to hold the wages during the judicial proceeding.

This proposal seems to be a commonsense solution to the situation that arises when an employee is terminated for theft or substantial property damage, but the employer has no option but to pay all outstanding compensation—including accrued vacation if required by its policy—to an employee who should be accountable for the loss. However, employers should know that filing a lawsuit against an employee invites him to file a counterclaim.

This file has been assigned to the Senate Judiciary Committee for further consideration.

Seasonal employees unemployment rules. In our last edition, we reported on **SF 48**, which would create special unemployment benefit rules for seasonal employers and employees. This file has been assigned to the Senate Labor Committee, which has not taken action at this time.

Teacher accountability. HB 22, which we summarized in the last edition, would require school districts to establish performance evaluation processes for new and more senior teachers. The bill passed the house and is awaiting action in the senate.

Bottom line

The legislature continues to consider these interesting proposals. We believe the salary history ban is a misguided attempt to address the gender wage gap, but like the wage transparency proposal, it's based on the inaccurate assumption that employer discrimination is a cause of the wage gap. Also, although the proposed pregnancy protections mirror federal law, the extension of those protections to smaller employers creates concerns about whether the mere existence of the law would cause them to make accommodations that create undue hardships simply because they cannot afford to litigate the law's requirements.

We encourage you to keep track of this legislation and let your representatives and senators know your opinions.

Excerpted from Wyoming Employment Law Letter
Bradley T. Cave, Paula Fleck, Editors
Holland & Hart LLP

Regulations

Alabama

Licensure—Healthcare Professionals

Medical Licensure Commission

In its five-year review, the Medical Licensure Commission amended rules for the commission's composition, licenses, hearings in contested cases, appeals, continuing medical education, practice of medicine across state lines, and licensure by interstate compact.

Cite: Ala. Admin. Code r. 545-X-1, 2, *et seq.* (37 Ala. Admin. Mthly. 3, 12/28/2018) (98 pages)

Adopted: 12/10/2018

Effective: 1/24/2019

www.albme.org/Documents/Rules/Temp/MLC%20Dec%202018/MLC12-18.pdf

Arizona

Licensure

Accountancy examinations

The Board of Accountancy amended rules for application and computer-based CPA examinations and education and accounting experience to recognize the National Association of State Boards of Accountancy International Evaluation Services as the approval authority for course-by-course evaluations. It also amended standards for reporting continuing professional education requirements.

Cite: A.A.C. R4-1-226.01, 343, 453 (24 A.A.R. 3413, 12/14/2018) (6 pages)

Adopted: 12/14/2018

Effective: 2/4/2019

https://apps.azsos.gov/public_services/register/2018/50/contents.pdf

California

Workers' Compensation

Deductible policies

The Department of Insurance adopted regulations to specify the forms of collateral or security an insurer may designate and rules regarding the establishment of reserves and recognition of receivables for use in connection with workers' compensation deductible policies.

Cite: Cal. Code Regs. tit. 10 §§ 2509.80, 2509.81, 2509.82 (CRNR 2018, No. 50-Z, 12/14/2018, page 2223) (6 pages)

Adopted: 11/29/2018

Effective: 1/1/2019

https://govt.westlaw.com/calregs/Search/Index

Workers' Compensation

Medical fee schedule—inpatient hospital

The Division of Workers' Compensation amended the Official Medical Fee Schedule for Inpatient Hospital fees.

Cite: Cal. Code Regs. tit. 8, § 9789.25 (CRNR 2018, No. 49-Z, 12/07/2018, page 2183) (14 pages)

Adopted: 11/26/2018

Effective: 12/1/2018

https://govt.westlaw.com/calregs/Search/Index

Delaware

Licensure—Continuing Education

Occupational therapy continuing education

The Board of Occupational Therapy Practice adopted new rules for continuing education content for licensees.

Cite: 24-2000 Del. Admin. Code (22 DE Reg. 523, 12/01/2018) (13 pages)

Adopted: 11/7/2018

Effective: 12/11/2018

http://regulations.delaware.gov/register/december2018/final/22%20DE%20Reg%20523%2012-01-18.pdf

Florida

Licensure

Professional engineer examination, endorsement, and experience

The Board of Professional Engineers adopted amendments to update and clarify the rule requirements, including the processing of incomplete or deficient applications and clarification of creditable experience following licensure in another jurisdiction.

Cite: Fla. Admin. Code R. 61G15-20.0010, 20.0015, 20.002 (44 FAW 234, 12/04/2018) (3 pages)

Adopted: 11/28/2018

Effective: 12/18/2018

https://www.flrules.org/gateway/readFile.asp?sid=2&tid=20980050&type=1&file=61G15-20.0010.doc

Illinois

Licensure

Real estate appraiser licensing

The Department of Financial and Professional Regulation adopted amendments to implement new criteria related to educational requirements that will permit noncollege graduates to obtain a real estate appraiser license. The amendments align Illinois' qualifying education requirements with the minimum criteria established by the Appraisal Subcommittee.

Cite: 68 Ill. Adm. Code 1455 (42 Ill. Reg. 21599, 12/07/2018) (24 pages)

Adopted: 12/7/2018

Effective: 11/26/2018

www.cyberdriveillinois.com/departments/index/register/volume42/register_volume42_issue49.pdf

Iowa

Healthcare Professionals

Pharmacy technicians and electronic transfer of prescriptions

The Board of Pharmacy amended rules to allow a certified pharmacy technician to transfer a prescription for a noncontrolled substance to another pharmacy or to receive a prescription transfer for a noncontrolled substance from another pharmacy, allow a technician to dispense a verified prescription that has been deemed not to require counseling to a patient while the pharmacist is on a break, and simplify rule language relating to the electronic transfer of prescriptions in anticipation of enhanced technologies in pharmacy software system capabilities.

Cite: Iowa Admin. Code r. 657-3.21(155A), *et seq.* (41 Iowa Admin. Bull. 1420, 12/19/2018) (5 pages)

Adopted: 11/26/2018

Effective: 1/23/2019

https://www.legis.iowa.gov/docs/aco/bulletin/12-19-2018.pdf

Kansas

Licensure—Healthcare Professionals

Disciplinary notifications, automated drug delivery systems

The Board of Pharmacy adopted regulations requiring notification to the board of disciplinary actions against pharmacies and updating provisions for automated drug distribution systems.

Cite: K.A.R. 68-2-23; 68-7-10; 68-7-25; 68-9-2; 68-9-3; 68-13-1; 68-20-15b (37-51 kan reg 1208, 12/20/2018) (5 pages)

Adopted: 12/20/18

Effective: 01/04/19

www.sos.ks.gov/pubs/KAR/future_effective/future_effective.pdf

Louisiana

Healthcare Professionals

Prescription drug prior authorization

The Board of Medical Examiners and Board of Pharmacy adopted new rules establishing the Louisiana Uniform Prescription Drug Prior Authorization Form in accordance with Act 423 of the 2018 legislative session.

Cite: LAC 46:XLV.8001, 8003; LAC 46:LIII.1129, 1130 (LR 44:2154, 12/20/2018) (7 pages)

Adopted: 12/20/2018

Effective: 12/20/2018

https://www.doa.la.gov/osr/REG/1812/1812.pdf

Maine

Vocational Rehabilitation

Legislative changes

The Division of Vocational Rehabilitation adopted amendments as required by the federal Workforce Innovation and Opportunities Act and made clarifications in the appeals process, postsecondary services, and transportation assistance.

Cite: 12 152 CMR 1 (Weekly Notices of State Rulemaking, 12/19/2018) (35 pages)

Adopted: 12/19/2018

Effective: 1/1/2019

https://www.maine.gov/sos/cec/rules/12/152/152c001.docx

Minnesota

Occupational Safety

Radon licensing

The Department of Health adopted amendments to rules governing radon measurement professional licenses, with changes to continuing education, license renewal, notice, standards of conduct, system tagging, and reporting requirements.

Cite: Minn. R. 4620.7200, 7250, *et seq.* (43 SR 687, 12/10/2018) (4 pages)

Adopted: 12/10/2018

Effective: 12/10/2018

https://mn.gov/admin/assets/SR43_24%20-%20Accessible_tcm36-361769.pdf

New York

Workers' Compensation

Fees for medical testimony

The Workers' Compensation Board updated the Official New York Workers' Compensation Medical Fee Schedule, Psychology Fee Schedule, Podiatry Fee Schedule, and Chiropractic Fee Schedule and incorporated them by reference.

Cite: 12 NYCRR 329-1.3, 333.2, 343.2, 348.2 (2018 N.Y. St. Reg. 34, 12/26/2018) (3 pages)

Adopted: 12/11/2018

Effective: 4/1/2019

https://docs.dos.ny.gov/info/register/2018/december26/rulemaking.pdf

Pennsylvania

Healthcare Professionals

Standards of practice and prospective drug review and patient counseling

The Pennsylvania Board of Pharmacy amended rules to increase access to naloxone for individuals at risk for opioid abuse and overdose by providing an exception for naloxone delivered to a correctional facility, prison, jail, or residential drug treatment facility and by providing relevant exceptions to the requirement that pharmacists perform a prospective drug review before dispensing or delivering a new prescription.

Cite: 49 Pa. Code §§ 27.18, 27.19 (48 Pa.B. 7404, 12/01/2018) (5 pages)

Adopted: 12/1/2018

Effective: 12/1/2018

https://www.pabulletin.com/secure/data/vol48/48-48/1857.html

Texas

Licensure—Healthcare Professionals

Dental licensure and criminal backgrounds

The Texas Board of Dental Examiners amended standards for professional conduct for the practice of dentists and dental hygienists, with regulations for disciplinary action against license applicants and current license holders for a variety of criminal offenses.

Cite: 22 TAC § 101.8 (43 TexReg 8589, 12/28/2018) (4 pages)

Adopted: 11/2/2018

Effective: 1/1/2019

https://www.sos.state.tx.us/texreg/archive/December282018/Adopted%20Rules/22.EXAMINING%20BOARDS.html#105

Utah

Licensure—Healthcare Professionals

Telehealth

The Division of Occupational and Professional Licensing adopted regulations to enforce the Telehealth Act's provisions as they relate to providers licensed under Title 58, Occupations and Professions.

Cite: Utah Admin. Code r. R156-1 (18-23 Utah Bull. 135, 12/01/2018) (4 pages)

Adopted: 10/1/2018

Effective: 11/8/2018

https://rules.utah.gov/publicat/code/r156/r156-01.htm#E42

Workers' Compensation

Premium rates for the uninsured employers' fund and the employers' reinsurance fund

The Labor Commission updated the premium rates for 2019 at 0.25% for the UEF and 2.0% for the ERF, for an overall decrease in the rates of 1%.

Cite: Utah Admin. Code r. R612-400-5 (18-24 Utah Bull. 47, 12/15/2018) (2 pages)

Adopted: 10/15/2018

Effective: 1/1/2019

https://rules.utah.gov/publicat/code/r612/r612-400.htm

Virginia

Licensure—Healthcare Professionals

Naloxone prescription and dispensing

The Board of Pharmacy adopted amendments that authorize issuance of a controlled substances registration to (1) persons who have been trained in the administration of naloxone in order to possess and dispense the drug to persons receiving training and (2) an entity for the purpose of establishing a bona fide practitioner-patient relationship for prescribing when treatment is provided by telemedicine in accordance with federal rules, including applicable record-keeping, security, and storage requirements.

Cite: 18 VAC 110-20-690, 700, 710, 735 (35 VA Regs Reg. 1190, 12/24/2018) (4 pages)

Adopted: 12/24/2018

Effective: 1/23/2019

http://register.dls.virginia.gov/details.aspx?id=7275

Washington

Licensure

Broker license examination

The Department of Licensing amended rules governing applications for managing real estate broker license examinations to require certified license affidavits from issuing agencies, modify the alternative qualifications to the requirement of three years of full-time broker experience, and provide that an applicant who relied on alternative qualifications and fails the exam is not permitted to repeat the exam under those qualifications.

Cite: WAC 308-124A-713; WAC 308-124A-715 (WSR 18-23-062, 11/16/2018) (2 pages)

Adopted: 11/16/2018

Effective: 12/17/2018

http://lawfilesext.leg.wa.gov/law/wsr/2018/23/18-23-062.htm

Workers' Compensation

Premium rates

The Department of Labor and Industries amended the tables of classification base premium rates, experience rating plan parameters, experience modification factor calculation limitations, and retrospective rating plan size groupings for the workers' compensation insurance program for calendar year 2019. There is a 5% overall average premium rate decrease, and classification base rates are amended for updated loss and payroll experience.

Cite: WAC 296-17-855, 875, 880, *et seq.* (WSR 18-24-073, 11/30/2018) (45 pages)

Adopted: 11/30/2018

Effective: 1/1/2019

http://lawfilesext.leg.wa.gov/law/wsr/2018/24/18-24-073.htm

Wisconsin

Licensure: Continuing Education

Continuing education random audits

The Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Professional Land Surveyors repealed rules that had authorized random audits on a biennial basis for compliance with continuing education requirements for licensure.

Cite: Wis. Admin. Code § A-E 10, 11, 12, 13 (Wisconsin Admin. Register No. 756B, 12/28/2018) (1 page)

Adopted: 12/11/2018

Effective: 1/1/2019

http://docs.legis.wisconsin.gov/code/register/2018/756B/register/final/cr_18_026_rule_text/cr_18_026_rule_text